

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, HI, 96813

February 24, 2012

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT:** REQUEST FOR APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE (DEPARTMENT OF THE INTERIOR) AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES (STATE OF HAWAII) REGARDING THE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR THE CONTROL AND ERADICATION OF INVASIVE RODENTS AND MONGOOSE IN HAWAII USING AN INTEGRATED PEST MANAGEMENT APPROACH (IPM)

**SUMMARY:**

Submitted for your approval is a memorandum of understanding (MOU) between the U.S. Fish and Wildlife Service (USFWS) and the Hawaii Department of Land and Natural Resources (DLNR) regarding the development of a programmatic environmental impact statement (PEIS) for the control and eradication of invasive rodents and mongoose in Hawai'i. The PEIS developed under this MOU would be a broad informational document regarding the environmental impacts of rodenticide use in control and eradication efforts in Hawaii. Future eradication and control projects would be able to use this information as part of the assessment of the impacts of a given project, in compliance with the requirements of the National Environmental Policy Act (NEPA) and Chapter 343 of the Hawaii Revised Statutes (HRS), "Environmental Impact Statements."

**BACKGROUND:**

The USFWS and the DLNR propose to evaluate for eventual implementation a program to control and eradicate, as appropriate, invasive rodents and small Indian mongoose on approved federal, state, county and private lands, using rodenticides that have shown to be effective and protective of the environment and human health when used as labeled within an IPM program. The primary objectives of rodent and mongoose control and eradication are the protection of threatened and endangered species and restoration of Hawaii's native habitats. The program proposes to continue the use of trapping and the current bait station use pattern using the

anticoagulant rodenticide diphacinone, and expand the program to include other rodenticides (including brodifacoum and chlorophacinone) and a variety of application methods, including burrow and canopy placement, ground-based and aerial broadcast. This program would be available for use on lands under the jurisdiction of federal, state, and county agencies, private landowners, and nongovernmental organizations.

The development of a programmatic impact statement for rodenticide use in Hawaii will decrease the time and cost associated with preparing compliance documents for future projects that utilize rodenticides. The creation of the PEIS does not in and of itself classify as an action requiring compliance with NEPA or Chapter 343, HRS. Rather, the PEIS would be created as an informational document only, which would then be available for use by future control and eradication projects as a tool describe the impacts of the given project that fall within the scope of the PEIS.

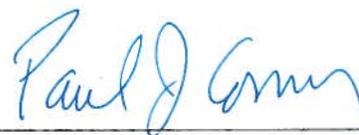
The MOU presented for approval describes the process by which these agencies will jointly prepare an assessment document describing the impacts of such a control or eradication program utilizing rodenticides. The MOU dictates that the USFWS and the DLNR, as lead agencies, will provide the necessary personnel and authority to attend meetings and provide timely review and approval of documents. As described in the MOU, each agency would commit staff as points-of-contact, with appropriate alternates designated, to collaborate on this project at the expense of each staff member's respective agency. During the development of the PEIS document, the USFWS would be responsible for ensuring compliance with NEPA requirements, and the DLNR would be responsible for ensuring compliance with Chapter 343, HRS. The MOU also provides a conflict resolution process in the event of disputes during the process of preparing the PEIS document.

#### RECOMMENDATION:

The Department recommends that the Board:

1. Authorize the Chairperson of the Board of Land and Natural Resources to approve and sign the Memorandum of Understanding, pending review and edits by the Department of the Attorney General, allowing agency staff to move forward with the development of a PEIS as described in the memorandum.

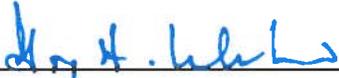
Respectfully submitted,



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Paul J. Conry, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



 WILLIAM J. AILA, Jr., Chairperson  
Board of Land and Natural Resources

Attachment: Habitat Conservation Plan

Attachment: Incidental Take License

Attachment: Endangered Species Recovery Committee Recommendations

## **MEMORANDUM OF UNDERSTANDING**

**Between the**

**UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE**

**And**

**STATE OF HAWAII**

**By its**

**DEPARTMENT OF LAND AND NATURAL RESOURCES**

**Regarding the**

**PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT**

**For the**

**CONTROL AND ERADICATION OF INVASIVE RODENTS AND MONGOOSE  
IN HAWAII**

**USING AN INTEGRATED PEST MANAGEMENT APPROACH (IPM)**

### **ARTICLE 1 – PURPOSE**

The U.S. Fish and Wildlife Service (USFWS) and the State of Hawaii Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (collectively referred to as Lead Agencies) agree to jointly prepare a programmatic environmental impact statement (PEIS) in compliance with both the National Environmental Policy Act (NEPA) and Hawaii Revised Statutes (HRS) Chapter 343 . The document will include an evaluation of the reasonable alternatives and potential impacts of an Integrated Pest Management (IPM) approach to the control and eradication of invasive rodents and mongoose for conservation purposes in Hawaii that includes broad-scale use of rodenticides. The Lead Agencies agree to enter into this Memorandum of Understanding (MOU) to fulfill the purposes as set forth above.

### **ARTICLE 2 – BACKGROUND**

The Lead Agencies propose to evaluate for eventual implementation a program to control and eradicate, as appropriate, invasive rodents and small Indian mongoose on approved federal, state, county and private lands, using rodenticides that have shown to be effective and protective of the environment and human health when used as labeled within an IPM program. The primary objectives of rodent and mongoose control and eradication are the protection of threatened and endangered species and restoration of Hawaii's native habitats. The program proposes to continue the use of trapping and the current bait station use pattern using the anticoagulant rodenticide diphacinone, and expand the program to include other rodenticides (including brodifacoum and chlorophacinone) and a variety of application methods, including burrow and canopy placement, ground-based and aerial broadcast. This program would be available for use on lands under the jurisdiction of federal, state, and county agencies, private landowners, and

nongovernmental organizations.

### **ARTICLE 3 – AUTHORITIES**

The mission of the USFWS is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The USFWS has the responsibility for conserving, protecting and enhancing fish, wildlife, plants and their habitats. The primary statutory authorities for the USFWS mission are: 16 United States Code (U.S.C.) 1531 et seq., Endangered Species Act (ESA) of 1973, as amended; 16 U.S.C. 703-712, and the Migratory Bird Treaty Act (MBTA) of 1918, as amended.

Pursuant to Article V and Article XI of the Hawaii Constitution and Hawaii Revised Statutes (HRS) Chapter 26-15, the Department of Land and Natural Resources (DLNR) shall manage and administer the public lands of the State and minerals thereon and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, state parks, including historic sites, and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs. Pursuant to HRS 183D, with respect to wildlife, DLNR shall manage and administer the wildlife and wildlife resources of the State and enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction.

### **ARTICLE 4 – OBJECTIVES**

The goal of this MOU is to implement processes that effectively and systematically develop a single environmental document that complies with both NEPA and HRS 343 in the most efficient and effective use of agency time and resources while satisfying each agency's authorities and legal requirements.

This MOU provides the framework for the Lead Agencies to collaborate in the timely preparation, review, and approval of this NEPA PEIS/HRS 343 environmental document. The Lead Agencies commit to work cooperatively toward implementing this process and reaching consensus on critical decisions related to this document. The Lead Agencies further commit to coordinate agency concerns and needs, distribute information, and review and comment on draft documents in a timely manner. The Lead Agencies will provide necessary personnel of appropriate technical skill and decision-making authority to attend meetings, provide prompt assistance, and timely review and approve documents (see Articles 6, 7, and 8).

### **ARTICLE 5 - MUTUAL AGREEMENT**

The Lead Agencies mutually agree to endeavor to:

1. Commit the technical and managerial Points of Contact (POCs) to fulfill their

respective responsibilities as set forth in Articles 6, 7, and 8 to provide information, attend meetings, make appropriate decisions, conduct timely review of documents, and to actively participate in the environmental review process, and promptly notify each other of any changes to the designated POCs in a timely manner.

2. Provide an informed and prepared designated alternate to attend any meeting for which the POC cannot attend and to provide any information or action needed.
3. Provide at least two week advance notice regarding all meetings and requests for information and document review.
4. Provide all information, analyses, document revisions, and comments within an agreed-upon schedule.
5. Have the USFWS provide meeting minutes for review and correction within two weeks of each meeting or other mutually agreed-upon schedule.
6. Participate fully and affirmatively throughout the NEPA/HRS 343 planning and documentation process, including developing and implementing effective public involvement strategies.
7. Participate at their own expense (see Article 11).
8. Implement processes in compliance with NEPA and HRS 343 for legally coordinating, preparing, documenting, and publicly distributing relevant documents and information.
9. Jointly make decisions regarding the selected alternative, including mitigation.

#### **ARTICLE 6 – USFWS RESPONSIBILITIES**

USFWS is responsible for compliance with the NEPA and managing the PEIS/HRS 343 process together with DLNR (see Article 7). Specific responsibilities include analysis, interagency coordination, preparation and review of one document compliant with both federal and state requirements, public outreach and involvement, participation in the Agency Coordination Team (ACT) and meeting and process facilitation, general technical assistance, responding to public comments, and managing the contractual process and contractor actions.

#### **ARTICLE 7 – DLNR RESPONSIBILITIES**

DLNR is responsible for compliance with HRS 343 together with FWS compliance with NEPA. Specific responsibilities include analysis, review and submission of the Environmental Impact Statement Preparation Notice (EISPN) to the State of Hawaii Office of Environmental Quality Control (OEQC) for publication and public review, coordination with the State of Hawaii Office of State Planning for compliance with the Coastal Zone Management Act, public outreach and involvement, participation in the ACT, general technical assistance, and responding to public comments. DLNR shall

coordinate the selection of the final alternative per HRS 343 with the Joint Federal Lead Agencies and acceptance of the final PEIS by the Governor.

#### **ARTICLE 8 - CONFLICT RESOLUTION PROCESS**

The Lead Agencies agree to work cooperatively towards the common goals as set forth in this MOU and to raise concerns for discussion and amicable resolution in a timely manner. The Lead Agencies shall seek resolutions that are in the best interests of the agencies, community, Native Hawaiians, and the public.

If a dispute should arise among the Lead Agencies regarding any matter associated with this MOU, the Lead Agencies agree to the following dispute resolution process:

- (1) The agency initiating the concern will timely communicate its concern and a recommended solution to the other agency by email. This will provide written documentation that the matter has been initiated.
- (2) If the agencies cannot resolve the matter informally through the email, the initiating agency will timely schedule a meeting with the Lead Agencies to seek a resolution.
- (3) If the agencies still cannot resolve the matter, the issue shall then be elevated to their respective administrative decision-makers for timely resolution.
- (4) All resolutions shall be consistent with the applicable Federal and State laws. The resolutions shall also take into consideration native Hawaiian values and practices.

#### **ARTICLE 9 – NO ENFORCEMENT AUTHORITY**

Signature of this MOU does not confer any additional authority.

#### **ARTICLE 10 – LIABILITY**

USFWS assumes no liability for any actions or activities conducted under this MOU except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

[DLNR Liability language to be inserted here pending review by Deputy Attorney General]

#### **ARTICLE 11 – STATEMENT OF NO FINANCIAL OBLIGATION**

Signature of this MOU does not constitute a financial obligation. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU.

#### **ARTICLE 12 – COMMITMENT LIMITATIONS**

This MOU shall be contingent upon the availability of funds. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If fiscal resources are to transfer, a separate agreement must be developed by the parties.

**ARTICLE 13 – CONGRESSIONAL RESTRICTIONS**

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this MOU or to any benefit to arise there from.

**ARTICLE 14 – AMENDMENTS/TERMINATION**

This MOU may be amended at any time by mutual agreement of the parties in writing. It also may be terminated by either party upon sixty (60) days written notice to the other parties.

**ARTICLE 15 – EFFECTIVE DATE AND DURATION**

This MOU will be in effect upon date of final signature and will continue until the NEPA Record of Decision (ROD) is signed and the state environmental impact statement is accepted.

DRAFT

**RECOMMEND APPROVAL:**

**UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE**

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**ROBYN THORSON,  
Director, Pacific Region**

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**Date**

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**LOYAL M. MEHRHOFF,  
Field Supervisor, Pacific Islands Fish and Wildlife Office**

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**Date**

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**WILLIAM J. AILA, Jr.  
Chairperson, Department of Land and Natural Resources**

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**Date**